

Appl. No. 10/695283
Docket No. 9086M
Amdt. dated June 16, 2011
Reply to Office Action mailed on April 26, 2011
Customer No. 27752

REMARKS

Claim 1 has been amended to recite the level of the polymer (basis at page 6, last paragraph) and the benefit agent (basis at page 7, first paragraph). A transcribing error (“pyrrolidon”) has also been corrected in Claim 1. It is submitted that all amendments are fully supported and entry is requested.

Claims 1 and 6-9 remain under consideration.

Formal Matters

For the record, there are no objections or rejections under 35 USC 112 outstanding.

Rejections Under 35 USC 103

Claims 1 and 9 stand rejected over US 5,883,058 and its incorporated US 5,120,532 in view of US 2002/0058015 as evidenced by the Journal of High Resolution Chromatography 1994 volume 17, pages 643-646, for reasons of record at pages 3-7 of the Office Action.

Claims 6-8 stand rejected under §103 over the above-cited documents and as also evidenced by the Journal of the Brazilian Chemical Society, volume 11, No. 6, pages 592-599, for reasons of record at pages 7-10 of the Office Action.

Applicants respectfully traverse all rejections, to the extent they may apply to the claims as now amended.

The Examiner’s thorough exposition of the grounds of rejection is acknowledged. This extra effort on the part of the Examiner allows what follows to be relatively brief.

At the outset, it is noted that the rejections no longer rely on the teachings of the Guskey patent, US 6,040,282. Presumably, this is because Guskey ‘282 teaches away from the use of copolymers of vinyl acetate (VA) and vinyl pyrrolidone (VP), as pointed-out in the previous Amendment.

Importantly, even though the Examiner is no longer relying on Guskey in making the rejections, that document does not simply disappear from a full consideration of the entire field of the invention. As the CAFC has stated:

In determining whether such a suggestion can fairly be gleaned from the prior art, the full field of the invention must be considered; for the person of

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ordinary skill is charged with knowledge of the entire body of technological literature, including that which might lead away from the claims invention. The {**11} Commissioner argues that since the PTO is no longer relying on Farmer or the Bacon and Farmer article, the applicant is creating a “straw man”. It is indeed pertinent that those references teach against the present invention. Evidence that supports, rather than negates, patentability must be fairly considered. *In re Dow Chemical Co.*, 837F.2d 469; 1988 U.S. App. LEXIS 587; 5 USPQ 2D (BNA) 1529 (Fed. Cir. Jan. 25, 1988). [emphasis supplied]

Net: Guskey ‘282 teaches away from the claimed VA/VP polymer employed herein.

Moreover, the Wells ‘532 patent that is cited for showing the VA/VP styling polymers specifically teaches (column 5, lines 5-10) that, “at levels below about 0.2% styling polymer, the present hair style hold benefits cannot be achieved . . .”

Net: Wells teaches a minimum VA/VP polymer usage level that is 4X that of the maximum usage level now recited in amended Claim 1. Even considering use of the term “about” in amended Claim 1, the Court has held that the term “about” does not include a 4-fold expansion of the numerical value of a parameter. *Conopco, Inc. v. May Department Stores Co.*, 46 F. 3d 1556, 32 USPQ 1225, 1227 (Fed. Cir. 1994).

Overall Net: The art of record either: i.) teaches away from the use of VA/VP polymers; and/or ii.) requires their usage levels to be far above that of the present claims.

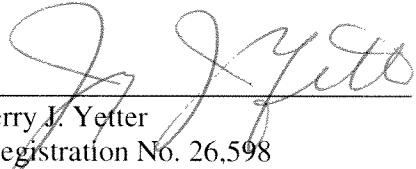
In light of the foregoing, it is submitted that no combination of the cited documents can support the rejections of Claims 1 and 9 or the rejections of Claims 6-8 under §103, as a matter of law. Reconsideration and withdrawal of all rejections are respectfully requested.

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In view of the amendments to Claim 1 and the arguments presented, early and favorable action in the case is requested.

Respectfully submitted,

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